IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE

WRIT PETITION NO. 2626 OF 1991

Shri. Sampatrao Bapusaheb Shinde,
Aged 35 years, R/o. Shirala -
through his Power of Attorney,
Shri.Sampatrao Ganpatrao Shinde,
R/o. Shirala,District : Sangli. ... Petitioner

Versus

1. Pandurang Anandrao Gaikwad,
aged about 30 years,

2.Bhimrao Dadu Shinde (Since deceased)
through his legal representatives :

a) Smt. Yashoda Bhimrao Shinde,
Aged 60 years,
R/o. Shirala, District Sangali.

b) Sou. Indubai Pandurang Gaikwad,
Age 42 years, R/o. Shirala,
District : Sangli.

c) Sou. Mangal Mahadeo Dinde,
Aged 38 years,
R/o. Nagle, Taluka Shahuwadi.

d) Sou. Suman Sambhaji Gaikwad,
aged 34 years, R/o.Shirala
(Gaikwad Wada(,

e) Shri. Shivaji Bhimrao Shinde,
Age 32 years, R/o. Shirala,
District : Sangli.

f) Shri. Kisan Bhimrao Shinde,
Aged 32 years, R/o. Shirala,
District Sangali.

g) Sou. Rekha Shankar Gaikwad,
Aged 25 yearts,
R/o. Fufere, Taluka Shirala,
District : Sangali. ... Respondents

Mr. D.S. Saswant for Petitioner.

Mr. Deepak A. Patil with Mr. Shiva Patil for
Respondent No. 1.

Mr. S.A. Pawar for Respondent Nos. 2A to 2G.

CORAM : F.I. REBELLO,J.
DATED : JANUARY 13, 2005

ORAL JUDGMENT :

. The Petitioner who is owner of the land created mortgage in favour of Respondent No. 1. Respondent No. 1 mortgage, thereafter created lease in favour of Respondent NO. 2 his son in law now represented by L.R.s. Respondent No. 1 thereafter filed an application purportedly to be under Section 70(b) of the B.T. & A.L. Act. The Petitioner herein was not party to the said proceedings. The learned Tahsildar based on the material before him was pleased to hold that original Respondent NO. 2 was the deemed tenant of the land.

. The Petitioner aggrieved preferred an appeal being Tenancy Appeal No. 8 of 1988. That appeal came to be allowed by judgment dated 30.10.1990. The learned Appellate Authority held that the tenancy created byt he mortgage, the lessee will not be entitled to protection of the B.T. & A.L. Act.

. The original Respondent No. 2 aggrieved, preferred revision application which came to be allowed, placing reliance on the judgement of the Apex Court in Dahya Lala nd Others Vs. Rasul

Mahomed Abdul RAhim and otehrs, AIR 1964 S.C. 1320. The Apex Court therein held that the tenant of a mortgage was also entitled to protection of the Act. While passing the order, however, by setting aside the appeal, the Revisional Authority further observed that the order passed in tenancy appeal can be challenged by the Petitioner herein if and when the Petitioner files civil suit for redemption. This order is the subject matter of the present petition.

. Heard learned counsel for the parties. On behalf of the Petitioner, learned counsel submitted that the protection to the lessee through mortgage based on the judgment in Dahyalala (supra) is only if the lessee was lawfully inducted as such. In the instant case, it is pointed out that Respondent No. 2 is son in law of the Respondent No. 1. The Petitioner as he was not party to the original proceedings had no opportunity to meet the case of Respondent Nos. 1 and 2 to point out that the proceedings were in collusion and that the induction of the tenant was not lawful. It is therefore, submitted that this court be pleased to set aside the order. It is also pointed out that in the meantime petitioner had filed a suit and obtained decree for redemption of the mortgage.

. It is not necessary to go into the issue as to

what is the effect of the suit for redemption considering the Judgement in Dahya Lala. Suffice it to say, that the impugned orders will have to be set aside as the petitioner herein had no opportunity of meeting the case of the Respondents.

. In the light of that the following order :

. Petition made absolute in terms of Prayer Clause (a).

. Matter is remanded back to the Tahsildar. Respondent No. 1 is directed to add petitioner as opponent in the proceedings. On notice being given to the Petitioner, Tahsildar to proceed according to Law after giving opportunity to the Petitioner and thereafter to pass appropriate order. Rule made absolute accordingly. No order as to costs.

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(F.I. REBELLO,J.)